

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

FILED

APR 03 2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

BENYEHUDAH WHITFIELD,)

Plaintiff,)

No. 08 C 50027

v.)

DENISE A. MCCAFFREY,)

Circuit Court Clerk of Lee)

County, Illinois, et al.)

Defendants.)

PLAINTIFF'S CONSOLIDATED MOTION FOR VOLUNTARY
DISMISSAL AND WITHDRAW IFP APPLICATION

NOW COMES the plaintiff, BENYEHUDAH WHITFIELD, pro se, and in support states the following:

1. On February 20, 2008, the plaintiff submitted his Complaint regarding the above matter.
2. On March 18, 2008, the Court entered a Docket

Entry Text directing the plaintiff to pay the Filing Fee in order to proceed with this matter, or File an IFP application; and Show Cause why the matter should not be dismissed under the doctrine of *Res judicata*.

3. At this present time, the plaintiff has several other Cases pending in Federal and state Courts.

4. Because the plaintiff is an indigent, he must rely on the OFFICIALS OF Pontiac Correctional Center ("Pontiac") to supply him with legal supplies in order to facilitate the means of proceeding effectively with his pending cases. However, the monthly supplies (20 sheets of paper, 8 envelopes, and 2 pens) he has been provided is grossly inadequate to enable him to proceed with all his pending cases.

5. The plaintiff has repeatedly advised the OFFICIALS OF Pontiac that in light of the numerous cases he has pending in the courts, he require more legal supplies in order to pursue his cases effectively. However, the OFFICIALS have insisted that the plaintiff can only receive the same (above) monthly supplies that all other indigent inmates receive.

6. The only way the plaintiff has been able to proceed

thus far with all of his pending cases is by relying on other inmates for extra supplies. But this is now becoming much too burdening.

7. The plaintiff has filed numerous grievances regarding the fact that he is not being provided with adequate legal supplies, and had been hoping for a resolution in his favor by now, but his efforts have been to no avail.

8. To make matters worst, the plaintiff has also been experiencing ongoing problems (since August of 2007) with gaining adequate access to his legal property he is forced to keep in storage; and which contains the information he needs to support his contentions of why the doctrine of *res judicata* is not applicable to this case.¹ The plaintiff has not been

¹ The plaintiff's contentions would include (but not limited to) the fact that because ~~any~~ *res judicata* is an affirmative defense, it must be pled by the defendants who may choose to waive the defense. Furthermore, in determining whether *res judicata* applies, Illinois Courts have employed two tests: the proof test, and transactional test. Pertinent to this matter is the proof test. And, the fact that Ms. McCaffrey never filed an answer or responsive pleading in the previous matter may all bear significantly on *res judicata* not being applicable under the proof test. The plaintiff cannot advance any further with these contentions at this time because he is being denied access to the information to support his contentions; which, again, would be germane if the defendants choose to plead the affirmative defense of *res judicata*.

given access to his legal property since mid February of this (2008) year ; despite the numerous grievances he has Filed and Complained about the matter.

9. On March 23, 2008, the plaintiff submitted his IFP application. Thus, he has already partially complied with the Court's March 18, 2008 Order. However, untill the OFFICIALS OF Pontiac start providing the plaintiff with the adequate legal supplies and access to his legal property, his ability to proceed with this matter effectively (including complying fully with the Court's Order) will be seriously hindered.

10. For the foregoing reasons, the plaintiff respectfully moves for voluntary dismissal of his Complaint ; and to withdraw his IFP application, untill his circumstances improve, and he is able to proceed more effectively with his claims against the defendants.

WHEREFORE, For the foregoing reasons, the plaintiff prays that this Court will grant this motion for voluntary dismissal of his Complaint, and to withdraw his IFP application, with leave to re-file at a later date.

Respectfully submitted
BenYeHudah Whitfield
 BenYeHudah Whitfield

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